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PRINCIPAL'S INTRODUCTION

The year 2011 seems destined to become one that will always be remembered in the financial world. With a US government downgrade in August, UK banks being downgraded in October and continuing uncertainties relating to the potential debt default by Eurozone members, navigating the markets can only be described as "challenging" at best. However, the show must, and will, go on.

Despite the obvious negatives, there is still much to be positive about in the offshore world, particularly in established and well regulated jurisdictions such as the Cayman Islands and the British Virgin Islands.

Cayman continues to attract significant numbers of funds and other investment vehicles to the jurisdiction. The BVI is in a similar position and remains the leading incorporating centre. Both are widely recognised as centers of excellence for trust and captive structures.

The aim of our Hyperion newsletters is twofold; to make our clients and industry partners aware of the range of services we offer and to provide an insight into how insurance can assist in navigating the very challenges described above. However, it is important to remember that professional indemnity and D&O insurance is not a fail-safe mechanism that covers all eventualities. It is a tool that compliments reasonable risk management procedures and diligence that, when properly used, can protect the buyer from certain adverse situations.

The recent hearing of the Weaving case in Cayman may not have provided the most controversial ruling, but it did mark a milestone in that it was the first of its kind in the jurisdiction. From an insurance perspective, if nothing else, it highlights the lack of protection that written indemnities actually offer to independent directors and the need to seek suitable D&O insurance.

As the aftermath of that case unravels, we will watch with interest to see how the D&O underwriters react and the related policy wording responds. As we indicate within this document, it is imperative that financial services providers utilise the services of a broker that understands both the intricacies of their business and the legislative and regulatory framework of the related jurisdiction.

With our local knowledge and technical expertise, we aim to provide our clients with the best possible guidance and protection available to suit their existing and future needs.

Simon Owen
Founder and Principal
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FUND MANAGER LIABILITY INSURANCE: MITIGATING THE RISKS

In these uncertain times, there are few assurances provided by the wounded financial markets. However, if we can guarantee nothing else, it is that the current economic downturn will proliferate one already worrying trend; the threat of litigation from investors against financial institutions and investment managers.

A greater focus on corporate governance and corporate responsibility, coupled with the escalating costs associated with defending lawsuits, means that the sourcing of protection against a number of risks is now an essential part of any fund manager's business plan.

With increased concerns relating to and the transparency of investment exposures, many investors are now taking a far greater interest in the insurance limits purchased by fund managers prior to their commitment to any investment.

Investors' need for retribution in the event of adversity is a clear reminder that internal controls and the purchase of adequate insurance coverage can no longer be overlooked, regardless of the size and investment strategy of a fund.

What risks can be covered?

There are a number of products available to fund managers, which are generally split into two classes: "Professional Indemnity Insurance" and "Directors and Officers Insurance".

Insurance is available to provide a level of protection to the legal entities and the individuals associated with a fund, albeit a board member or an investment advisor. The summaries below highlight the types of risk that can be covered under each class.

Professional Indemnity Insurance – protects the insured legal entities (fund, investment manager) named in the policy against claims arising from third parties as a result of the provision of professional services. Coverage can include the following:

- errors and omissions
- civil liability
- breach of statute
- breach of trust
- allegations of negligence
- negligent acts
- defense costs

Directors' and Officers' Liability Insurance – protects individuals against any claims made against them for any wrongful acts or the allegation of wrongful acts. Defense costs are a key aspect, covering expenses associated with regulatory investigation as well as legal actions. Coverage can include the following:

- defense costs
- neglect
- error
- misleading statements
- misstatements
- breach of statute
- breach of trust

FOCUS ON CAYMAN - WEAVERING FUND: INSURANCE ISSUES

Despite the significant awards involved, the recent Cayman court ruling against the directors of the Weaving Macro Fixed Income Fund Limited was not completely unexpected upon review of the evidence.

However, as this was the first case in which directors of a Cayman investment fund have been held personally liable for losses incurred by the fund as a result of their 'willful neglect' of their duties and responsibilities.

In summary, the court ruled had that the two directors performed the duties as reasonably expected of them; the financial position of the fund could have been significantly improved by way of a much earlier liquidation. As a result damages of USD111m were awarded against each of the defendants.

From a Cayman perspective it goes a long way to showing the world that the jurisdiction takes a very strong view on the performance and professionalism of fund directors.

From an insurance perspective, it does not mean that independent directors should be sourcing huge limits of coverage. However, what it does do is reinforce the need for all independent directors to ensure they have suitable D&O coverage in place, preferably as a tier of limits separate from any form of civil liability coverage held by the manager.

The express wording of the policy in-force is also of extreme importance. We are yet to see how any D&O coverage held by the Weaving directors will react to the ruling. However, it is worth remembering that it may not be the adverse ruling against the directors that precludes them from making a recovery on an insurance policy. It may simply be because the policy wording is heavily weighted in favour of the insurer and not the insured.

This clearly demonstrates the importance of working with a broker that intimately understands their clients' operations and needs. Since beginning our Cayman operations in 2009 we have highlighted a concerning number of coverage issues upon review of our Cayman practitioners policies placed by overseas brokers.

These range from US exclusions being in place for insureds with significant US exposures, to even more extreme cases. In one case, we discovered that a Director Services provider was not actually covered for providing directorships.

These are the real issues the Weaving case should bring to the forefront of our minds. Unlike many brokers who tend to purely focus on price; our focus is on providing the right cover to protect our clients.

In closing, buying the right coverage should not increase the cost to the purchaser. However, buying the wrong coverage is an expensive habit. Caveat emptor.

Should you have any Cayman enquiries or you would like our specialist team to review your existing coverage, please contact Mike Donnelly (mike@hyperion-risk.com) in our Cayman office at: +1 (345) 623 6500

FOCUS ON THE BVI - THE SECURITIES & INVESTMENT BUSINESS ACT ("SIBA")

The Regulatory Code, (2009) applies to licensees under the Securities and Investment Business Act, 2010 ("SIBA licensees"). SIBA licensees include BVI licensed fund managers, administrators, broker-dealers, advisers, arrangers and custodians.

The BVI Financial Services Commission ("FSC") is now requiring all SIBA licensees to maintain professional indemnity coverage at all times and has been systematically requesting evidence of coverage for all new applicants. Whilst the insurance requirements of certain financial services related licensees are explained under the various Acts and accompanying legislation, it is important to note the FSC has ultimate discretion over the level and scope of coverage they require an applicant to have in place. Furthermore, there is now a significant onus on the insured to have coverage provided by insurers licensed in the jurisdiction, an issue also often overlooked by our overseas competitors.

Hyperion has assisted a number of new applicants in this regard, both to obtain quotes and ensure that the FSC recognises related practicality issues, such as availability and affordability of certain types and limits of coverage. We have also explained the difficulty in obtaining bound coverage prior to the issuance of a licence, another issue that had slowed the licensing process for some applicants.

In summary, our view is that SIBA will ultimately have a positive long-term impact on the BVI fund and investment industry. The BVI regulatory regime and legislative framework for investment business has improved dramatically over the past decade. The recognition of the importance of suitable insurance coverage to accompany sophisticated practitioners and products further endorses that.

Should you or your clients have any questions in relation to the potential insurance requirements of existing BVI licensees, new applicants under SIBA or any other insurance needs or guidance in the BVI, please do not hesitate to contact Martin Cooke (martin@hyperion-risk.com) in our BVI office at: +1 284 494 4717

ABOUT HYPERION

Hyperion Risk Solutions Limited ("Hyperion") is a licensed insurance intermediary and international consultancy practice with operations in the Cayman Islands, the British Virgin Islands and Anguilla. In 2006, we were approved as members of the Wells Fargo Global Broker Network, an international network of independent insurance brokers.

We specialise in the provision of insurance solutions to the financial services industry, including the procurement of insurance products specifically designed to protect the likes of law firms, trust companies, fund managers, administrators and independent directors and officers.

OUR APPROACH

As industry specialists, we have developed a wide range of ideas, solutions and innovative policy wordings to provide the most effective possible insurance cover for complex financial and professional firms. We do not simply offer insurers' "standard" policies (which are generally drafted with the insurers' interests as paramount); we engage with the client to understand their business, culture, concerns and priorities, and then design and negotiate cover accordingly.

Our approach is unique because we combine the physical presence of a dedicated local broker based in Grand Cayman, with the subject-matter expertise, experience and market leverage of one of the world's major brokers, Gallagher London, the international subsidiary of Arthur J. Gallagher & Co.

Unlike our competitors that generally operate from overseas, our local presence allows to understand and suitably monitor the ever-changing legislative and regulatory environment of the jurisdictions from which our clients operate. We see our role not just as one of execution but, more importantly, as a trusted advisor to assist you with the natural progression our clients' businesses.

In summary, we are committed to providing a pro-active that primarily focuses on the following key issues:

1. ensuring that the coverage suits our client's needs from the outset and are adapted as and when your business may require;
2. asking the right questions to ensure that we and underwriters fully understand the intricacies of your business and the associated risks;
3. answering our client's questions and concerns, both in terms of the insurance placement and handling of claims (should they occur);
4. issuing guidance on the many complex issues that arise in relation to PI and D&O of which a generalist broker will simply be unaware.

Our philosophy is simple; we never forget that we serve the client, not our markets.